

1 The Moritzes have encouraged the City to undertake other corrective measures and to solve the alleged
2 problem, but through its counsel, the City repeatedly has refused to do so.

3 The next CAO deadline is March 20, by which point the Moritzes are expected to have all the
4 necessary permits and authorizations required to implement the work. But they cannot comply because
5 they simply do not have the money to obtain engineering drawings that are required. Likewise, they do
6 not have the money to meet next deadline imposed, April 24, 2009, at which point the RWQCB expects
7 that the Moritzes will have cleaned up and abated the alleged nuisance.

8 The CAO threatens a variety of additional expenses, civil liability of no less than \$500 per day
9 for violation of the CAO, and \$1000 per day for failing or refusing to furnish technical or monitoring
10 program reports. In short order, the Moritzes who already are unable to come up with the roughly
11 \$100,000 required by the CAO, will be buried under the weight of additional fines and penalties,
12 causing irreparable and substantial harm, harm grossly disproportionate to the benefit that RWQCB
13 expects to obtain from implementing of the CAO.

14 Had the RWQCB acted properly by requiring the City of Poway to control its storm waters, the
15 Moritzes would not have had to act on their own in an isolated effort to implement their own storm-
16 water-management system. The CAO could have been and should have been modified consistent with
17 23 Cal. Code Regs § 2907 II to "*name other dischargers as permitted by law.*" These words are
18 *mandatory*. The RWQCB *must* name other dischargers as permitted by law. But those words and the
19 rule of law have been ignored to date; the Moritzes were singled out for failing to properly implement
20 their own, private storm-water management system, a system they believed necessary and permissible
21 after San Diego's Witch-Creek fires. Even the governor noted that the area was such a disaster that
22 statutes, rules, regulations and orders were suspended as necessary to allow for corrective measures. But
23 the Moritzes have been deprived of the governor's explicit protection.

24 Granting this stay and holding off on implementation of the CAO will afford the opportunity for
25 reasonable minds within the SWRCB and RWQCB to reconsider a coordinated, neighborhood-wide,
26 storm-water management system that would obviate the need for individual citizens such as the Moritzes
27 to implement their own isolated private systems. Failing to grant this stay to allow time for
28 consideration of a unified storm-water management system will leave the Moritzes and other neighbors

1 exposed to future scours, sedimentation, and property damage of the very kind that precipitated the
2 conduct ultimately giving rise to this CAO.

3 2. **THERE IS A LACK OF SUBSTANTIAL HARM TO OTHER INTERESTED**
4 **PERSONS AND TO THE PUBLIC INTEREST BY GRANTING A STAY:**

5 There is an absence of any evidence in the record demonstrating substantial harm to anybody, to
6 any interested persons, and to the public. RWQCB has no evidence that there is any damage to water
7 quality. RWQCB staff person, Christopher Means, testified during deposition as follows:

8 Q Do you know whether the regional board has ever done any inspection or test by
9 which it could determine the quality of the water as it enters onto Bill Moritz's
10 property during a rain event?

11 A I don't know.

12 Q How about as it -- as water comes off of the property? Has the regional board ever
13 done any inspection or test to determine the quality of water as it exits the Moritz
14 property?

15 A Only that I have seen pictures of the property by the city of Poway putting in their
16 interim BMPs. I have seen it during a rain event, a picture of it.

17 Q What did you conclude based upon the picture?

18 A That water was going across his property, there was some sediment in it from
19 upstream.

20 Q Did you make any determination whether the water quality was degraded as it exited
21 his property?

22 A I don't have enough information to make that determination.

23 Q Because you don't have any inspection or tests, right?

24 A To my knowledge, there -- I have conducted no tests or investigations as to
25 constituents contained in storm water crossing Dr. Moritz's property.

26 Q Do you believe that the Moritz property, as it existed in August 2008, threatened to
27 degrade water quality?

28 A I don't know. (Deposition of Christopher Means at Appendix E., exhibit 20, page
64:19-65:24.)

29 Similarly, when asked about the threat to public health, RWQCB staff person, Christopher
30 Means, testified that he has no evidence of any toxicity that might threaten public health, although he
31 raised a concern about organisms in the stream (which flows but three days per year):

32 Q Okay. And how about the threat to the public health, including the degree of
33 toxicity of the discharge? What evidence does it have in those regards? Same thing?

34 A In the case of discharge fill to a stream, I have no evidence -- I do not know where
35 Dr. Moritz got his fill from, so I don't know whether or not it's toxic fill or not. I
36 have no way to know that.

37 Q No evidence as you sit here today, correct?

1 A I have no idea of there being a toxicity threat from his discharge, other than the
2 potential of sediment to be discharged into the neighboring streams and to
3 detrimentally affect organisms living in that stream by smothering them.
(Deposition of Christopher Means at Appendix E, Exhibit 20 at page 105:1-14.)

4 But RWQCB staff, Christopher Means rightly candidly admitted that even the harm to unknown,
5 unseen organisms was speculative at best, which is far from the standard that threats under Water Code
6 section 13304¹ are required to meet:

7 Q Any idea of any species that were ever there?

8 A Of aquatic species?

9 Q Yes.

10 A No.

11 Q That's just speculation?

12 A It's more of a general observation about effects of the discharge of waste on water
bodies.

13 Q Not based on this particular instance, correct?

14 A The stream -- the ephemeral stream is given beneficial uses through our basin plan
of warm -- which -- how do I say this. There's the potential that there could be aquatic
species in there at the time that water is flowing through the stream and that it could help
move these down to a more permanent -- not permanent, but a larger stream. There's the
possibility that aquatic species can travel through the ephemeral stream.

15 Q So it's speculative here, but based on experience at other ephemeral streams?

16 A It's speculative here because I don't know except from photographs² what the
stream looked like prior to Dr. Moritz's activities.

17 The site is not likely to cause harm to anybody at any point in the reasonably foreseeable future
18 because it is *stabilized*, and BMPs are preventing erosion in discharge of sediment off-site. RWQCB's
19 staff person, Christopher Means, admitted that the site currently is stabilized:

20 Q Do you know today whether the site is stabilized as far as erosion control and
sediment control is concerned?

21 A From the photographs I've seen of the abatement work that was performed by the city
22 of Poway, so far to date those BMPs seem to be preventing erosion and discharge of
23 sediment off-site from your client's property. (Deposition of Christopher Means at
Appendix E, Exhibit 20 at page 88:1-8.)

24
25
26 ¹ Water Code section 13304 (e) is the source of authority for issuance of the CAO, but requires more than mere possibility of harm. That code subsection
states: "*Threaten*," for purposes of this section, *means a condition creating a substantial probability of harm*, when the probability and potential extent of
27 harm make it reasonably necessary to take *immediate* action to prevent, reduce, or mitigate damages to persons, property, or natural resources. (Emphasis
added).

28 ² The photographs are hearsay, to which Petitioners timely objected. (See Appendix H.) The *sole* basis for the finding that there is a potential of harm to
aquatic species is hearsay evidence, which is *not* sufficient to support the finding of harm, per Government Code section 11513.

1 Because the site is stabilized, there is no immediate need for action to prevent harm or damages.
2 There simply is no need to proceed with enforcement immediately. On the other hand, the Moritzes will
3 be substantially harmed by proceeding. The matter should be stayed while the state board gives
4 appropriate consideration to the matter, and pending the outcome of the related litigation.

5 **3. SUBSTANTIAL QUESTIONS OF LAW AND FACT EXIST:**

6 As set forth in the Petition for Review at section 4, and as set forth in detail in the supporting
7 Points and Authorities (Appendix A), substantial questions of law and fact exist. These questions
8 include the following issues.

9 a. The Regional Board improperly denied evidentiary objections, then improperly
10 received and relied upon evidence subject to exclusion. Submittals relating to the
11 evidentiary issues are set forth in Appendix H.

12 b. Via the CAO, the Regional Board improperly is asserting regulatory authority
13 over a dry wash dubbed an ephemeral stream, which flows approximately 3 days per year.
14 Consistent with the United States Supreme Court's decision in *Rapanos v. United States*
15 547 U.S. 714 (2006), Water Code section 13050 (e) does not and should not categorically
16 include within the phrase "waters of the state" such dry washes or ephemeral streams in
17 which water flows three days per year because rules of statutory construction should not be
18 applied so as to confer regulatory authority over all such dry land; the legislature could and
19 should have specifically included such dry washes dubbed ephemeral streams or all land on
20 which water falls in the Water Code had it intended to confer to the state and regional
21 boards such regulatory authority.

22 c. Via the CAO, the Regional Board is improperly considering useful, usable fill
23 material and a pipe as "waste" notwithstanding the fact that the statutory definition of the
24 term "waste" set forth in Water Code section 13050(e) includes neither by definition nor by
25 categorical examples the usable and useful fill material or pipe that here was specifically
26 intended to protect Petitioners' property from unconstrained City of Poway storm waters,
27 and from the related scouring and sedimentation. Had the legislature intended to include
28 such fill within the definition of "waste," it could have and should have done so

1 specifically or by including it within either a definition that would include usable, useful
2 fill materials and pipes or by category used to exemplify the meaning of the term “waste,”
3 as used in the definitional statute.

4 d. Absent a discharge of “waste” into “waters of the state,” there is no need for
5 Waste Discharge Requirements (WDRs), Reports of Waste Discharge (“ROWDs”), no
6 violation of Water Code sections 13260 and 13264, rendering issuance of the CAO
7 improper.

8 e. Absent a discharge of “waste” into “waters of the state” or into “waters of the
9 United States,” there is no violation of the Basin Plan for the San Diego region, making
10 issuance of the CAO improper.

11 f. Absent a discharge or deposit of “waste” into “waters of the state” there is no
12 pollution, contamination, or nuisance that can justify issuance of a cleanup and abatement
13 order pursuant to Water Code section 13304, making issuance of the CAO improper.
14 There is no immediate need for action, no “threat” within the meaning of Water Code
15 13304, the site is stabilized.

16 g. Even if issuance of the CAO were otherwise proper, the Regional Board’s CAO
17 violates Water Code section 13360 by specifying the specific design or method of
18 compliance. Regional Board staff admitted that the point of the order is to specify the
19 design — to return the stream to an earlier condition as the only allowable method of
20 compliance — thus precluding alternate means of achieving water quality objectives and
21 compliance.

22 h. The Regional Board improperly issued the CAO notwithstanding the absence of
23 any evidence of degradation of water quality. The Regional Board had no evidence of
24 background or upgradient water quality condition, and no evidence of any impacts by the
25 site downgradient. The RWQCB has no record evidence to demonstrate the creation or the
26 threatened creation of a condition of pollution or nuisance within the meaning of the San
27 Diego Basin Plan, or of Water Code sections 13050 and 13304.
28

1 i. The Regional Board failed to honor Governor Schwarzenegger's emergency
2 suspension of statutes, rules, and regulations pertaining to the removal, storage, and
3 disposal of hazardous and nonhazardous debris and necessary restoration and related
4 activities pertaining to the Witch Creek fires, as required by Executive Order S-13-07. The
5 Moritzes' conduct could have and should have qualified for a categorical exemption
6 because of the scours and sedimentation that their properties suffered following the Witch
7 Creek fires because of the City of Poway's failure to control storm waters.

8 j. The Regional Board violated 23 Cal. Code Regs § 2907 and Water Code section
9 13241 by failing to take into account the discharger's resources and economic
10 considerations in determining schedules for investigation and cleanup and abatement or for
11 establishing water quality objectives for the Petitioners' watershed.

12 k. The Regional Board violated 23 Cal. Code Regs § 2907, which requires the
13 naming of other dischargers and requires consistent standards for similar circumstances (1)
14 by failing to name the City of Poway whose uncontrolled storm waters repeatedly and
15 annually with significant storm events scour the Moritzes' property and deposit sediment
16 thereon, notwithstanding the fact that the Moritzes are being held to account for the mere
17 possibility of such effects on downgradient property; (2) by failing to name other
18 upgradient property owners who have failed to implement any sedimentation or erosion-
19 control best management practices, have graded in the very same dry wash/ephemeral
20 stream within less than 100 yards of the Moritzes' property, notwithstanding the fact that
21 the Moritzes are being held to account for this very conduct; and (3) by allowing the
22 existence in multiple locations within 100 yards of the Moritz property multiple pipe
23 culverts within dry washes/ephemeral streams, notwithstanding the fact that the Moritzes
24 are being held to account for a similar pipe culvert. Unless RWQCB treats all alike, 23
25 Cal. Code Regs § 2907 becomes meaningless surplusage, contrary to rules of statutory
26 construction. The regional Board should adhere to the rule of law and either modify the
27 CAO to name all dischargers, or withdraw the CAO.

1. If indeed there was actionable discharge of "waste" into "waters of the state," the Regional Board acted improperly by failing to issue a waiver from waste discharge requirements pursuant to Water Code sections 13260(a), (b), 13263(a), 13264(a)(3), and 13269,

4. CONCLUSION:

In accordance with California Code of Regulations, section 2053(a), Petitioner requests a stay of Order No. R9-2008-0152 as it applies to Petitioner. Petitioners have alleged and set forth proof (1) that substantial harm to petitioner will result if a stay is not granted; (2) that no substantial harm to other interested persons or to the public will result if a stay is granted; and (3) that there are substantial questions of law and fact regarding the propriety of Regional Board's Order No. R9-2008-0152.

Dated: March 6, 2009

THE SIMPSON LAW FIRM,
A Professional Corporation
Attorneys for Dr. Bill Moritz

By: ~~Douglas J. Simpson~~

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5
6 **THE STATE OF CALIFORNIA**
7 **STATE WATER RESOURCES CONTROL BOARD**

8 IN THE MATTER OF:) APPENDIX B, PART 2
9)
10 THE CALIFORNIA REGIONAL WATER) DECLARATION OF BILL MORITZ IN
11 QUALITY CONTROL BOARD, SAN DIEGO) SUPPORT OF REQUEST FOR STAY
12 REGION,) STAY OF ENFORCEMENT OF
13) CAO R9-2008-0152;
14 v.) [23 Cal. Code Regs § 2053]
15) Date of RWQCB Action: Feb 11, 2009
16 DR. WILLIAM and LORI MORITZ)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

16 I, Bill Moritz, declare as follows:

17 1. I know of my own personal knowledge each of the following facts, and could
18 competently testify thereto were I called do so.

19 2. City of Poway personnel repeatedly authorized work that I performed at my property to
20 repair storm-water damage. I relied on their assurances, performed work, but ultimately was named not
21 only by the RWQCB in a CAO, but also by the City of Poway in litigation filed in the San Diego
22 Superior Court, case no. 37-2008-00088427-CU-MC-CTL.

23 3. Given the substantial issues involved in that matter, I first had a Cross-Complaint filed
24 against the City of Poway, then a First Amended Cross-Complaint, for damages, declaratory, and
25 injunctive relief, setting forth the following specific causes of action:

- 26 a) Deprivation of Civil Rights per 42 USC section 1983;
27 b) Deprivation of Civil Rights per California Civil Code section 52.1;
28 c) Breach of Mandatory Duty per Government Code section 815.6;
d) Assault and Battery;

- e) Negligent Infliction of Emotional Distress;
- f) Intentional Infliction of Emotional Distress;
- g) Trespass;
- h) Loss of Consortium;
- i) Negligent Supervision;
- j) Promissory Estoppel;
- k) Declaratory Relief; and
- l) Injunctive Relief

4. Had the City of Poway more properly managed storm water in the area that flowed onto my property during storm events, I would not have had to take measures to protect my property. This is one of the issues in the litigation, in which we have alleged that the City of Poway breached its mandatory duty to control storm waters to prevent scouring and sedimentation that occurred on my property following the Witch Creek fires of October 2007. But for the City's breaches of mandatory duties, I would not have had to implement my own storm-water management method to protect my property.

5. Although I believe that the Cleanup and Abatement order is improper, I believe that at a minimum the order ought to be modified to also name the City of Poway so that storm-waters in the area are managed in a unified way, rather than piecemeal by isolated property owners implementing their own storm-water practices. Proceeding with this cleanup and abatement order rather than staying it to allow for that unified remedy or to allow for the litigation to obtain such a remedy will cause me, my wife, and my family substantial and irreparable harm.

6. Immediate enforcement of the Cleanup and Abatement Order also will cause me, my wife, and my family substantial harm because like many companies and individuals in the United States, my wife and I have had our retirement investments and our home equity evaporate in the recent recession. Additionally, our mortgage payment has increased by \$600 monthly as a consequence of escalating property-tax rates. We do not have the current assets or ability to borrow to retain the services of civil engineering assistance that we understand is necessary because of the Cleanup and Abatement Order.

1 7. We paid \$10,000 of the approximately \$20,000 that our initial consultant, Geosyntec,
2 charged for the preparation of a stream-restoration plan in September 2008. (See Appendix E at Exhibit
3 13.)

4 8. We have been told that in order to prepare plans to comply with the Cleanup and
5 Abatement Order, we will need to hire a civil engineer who will likely charge in the range of \$23,000
6 for plans, plus City of Poway grading-permit fees on the order of \$12,000, plus a security deposit of
7 unknown amount, plus sub consultants of \$3200 (Appendix E at Exhibit 14) — planning and
8 engineering costs alone of approximately \$60,000 (\$20,000 + \$23,000 + \$12,000 + \$3200 + unknown
9 security deposit).

10 9. This \$60,000 amount for planning we understand is *exclusive* of the costs necessary to
11 actually implement the engineered plans, and is *exclusive* of costs to report back to RWQCB that the
12 work has been performed. These items likely will bring the total cost of compliance to something in the
13 range of \$100,000 — money that we neither can pay nor can borrow.

14 10. The CAO imposes a variety of deadlines. The first deadline is immediate, requiring
15 immediate site-stabilization measures — even though RWQCB has admitted that the property is already
16 stabilized.

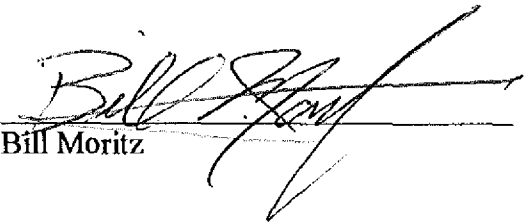
17 11. The next deadline is March 20, by which point we are expected to have all the necessary
18 permits and authorizations required to implement the work necessary to comply with the Cleanup and
19 Abatement Order. But we simply cannot comply because we simply do not have the money to obtain
20 engineering drawings that are required.

21 12. Likewise, we do not have the money to meet next deadline imposed, April 24, 2009, at
22 which point the RWQCB expects that we will have cleaned up and abated the alleged nuisance.

23 13. The Cleanup and Abatement Order threatens a variety of additional expenses, including
24 civil liability of no less than \$500 per day for violation of the order, and \$1000 per day for failing or
25 refusing to furnish technical or monitoring-program reports. In short order, and even though we already
26 are unable to come up with the roughly \$100,000 required by the CAO, we will be buried under the
27 weight of additional fines and penalties, causing irreparable harm to me, to my wife, and to my family.
28

1 14. There is no apparent damage to any neighboring property from any of the work
2 performed on my property.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 facts are true and correct of my own personal knowledge and that this declaration is signed this fifth day
5 of March, 2009 at Poway, California.

6
7
8 
9 Bill Moritz

IN THE MATTER OF:)	APPENDIX C
)	
)	BILL AND LORI MORITZ'S REQUEST TO
THE CALIFORNIA REGIONAL WATER)	SUPPLEMENT THE RECORD
QUALITY CONTROL BOARD, SAN DIEGO)	
REGION,)	[23 Cal. Code Regs § 2050.6]
)	
v.)	Date of RWQCB Action: Feb 11, 2009
)	
)	
DR. WILLIAM and LORI MORITZ)	
)	
)	

The Moritzes request that the State Water Resources Control Board received additional evidence or conduct a hearing to consider additional testimony, evidence, or argument has discussed herein.

1. The accompanying four pages of photographs taken during a storm event on February 9, 2009 showing the headwaters of the dry wash/ephemeral drainage that originate on a City of Poway street demonstrating an absence of BMPs, and demonstrating also the transport of sediment given the storm-water scouring. The City of Poway High Valley Road is an impervious surface that captures storm water, then concentrates it in an unlined, earthen swale, and ultimately transmits the storm water to and through the Mortizes' property downgradient. The City of Poway is a discharger, whose storm water and sediment flows across the Moritz property with no velocity dissipators, no effective sediment BMPs, and no effective erosion control BMPs, contrary to the requirements of RWQCB order

1 R9-2007-0001, creating a condition of nuisance. The Moritzes' conduct described herein was an effort
2 to control such storm waters. This evidence was discussed on the record at the February 11, 2009
3 hearing, but the document submittal deadline already had passed on January 23, 2009, and the rain even
4 in issue occurred on February 9, 2009, precluding the earlier submittal of the four pages.

5 2. The transcript of proceedings at the February 11, 2009 hearing. Petitioners are able to
6 pay for production of the transcript, but request that it be transcribed and available for the SWRCB's
7 consideration, particularly on the issue of the RWQCB's reliance on hearsay evidence as the sole
8 support of the findings of the CAO, contrary to timely objections made per Government Code section
9 11513.

10 3. Evidence from related litigation. Litigation is pending in the San Diego Superior Court,
11 case number 37-2008-00088427-CU-OR-CTL. Discovery still is proceeding. Substantial motion work
12 and trial that will likely address many of the issues of fact and of law relevant to this RWQCB/SWRCB
13 have yet to occur and have yet to be decided. For example, Bill Moritz has alleged that the City of
14 Poway gave him permission to perform work that ultimately led to the CAO, and that he relied on that
15 permission to his detriment or yet these are the essence of facts necessary to prove promissory estoppel,
16 which if successful would make the City of Poway liable for the work that Bill Moritz performed to his
17 detriment — ultimately valued by the cost of response to the CAO. Similarly, Bill Moritz alleges in his
18 cross-complaint that the City of Poway breached its mandatory duty set forth in order R9 2007-0001 to
19 implement storm-water management plans and practices to prevent the scouring and sedimentation that
20 occurred on his property, scouring and sedimentation that his conduct that is subject to the CAO was
21 designed to correct. These issues will be actually and necessarily decided in the litigation. These
22 issues are relevant to the RWQCB CAO and to the SWRCB petition. The Moritzes alleged below and
23 again raise in their petition the RWQCB's mandatory obligation set forth in 23 Cal. Code Regs § 2907 to
24 name other dischargers as permitted by law. If indeed the City of Poway caused or permitted Bill
25 Moritz's conduct that resulted in the CAO, or if indeed the City of Poway's breached mandatory duties to
26 control storm water, then the City of Poway is also a discharger and not to be named on the CAO. Note
27 the accompanying photographs of City of Poway storm-water management, with the failure of BMPs
28 that cause or permit storm water to flow directly to and through Moritzes property after having picked

1 up substantial settlement. The City of Poway is a discharger and ought to be named, and the record
2 ought to be supplemented with additional evidence yet to be gathered during discovery of the litigation
3 that will address many of the issues raised in the record and in the petition. The practical effect of
4 naming the City of Poway of course is unified implementation of storm-water management, as
5 contrasted with the disjointed, piecemeal storm-water management currently being practiced within the
6 City of Poway by isolated property owners.

7 Dated: March 6, 2009

THE SIMPSON LAW FIRM,
A Professional Corporation
Attorneys for Dr. Bill Moritz

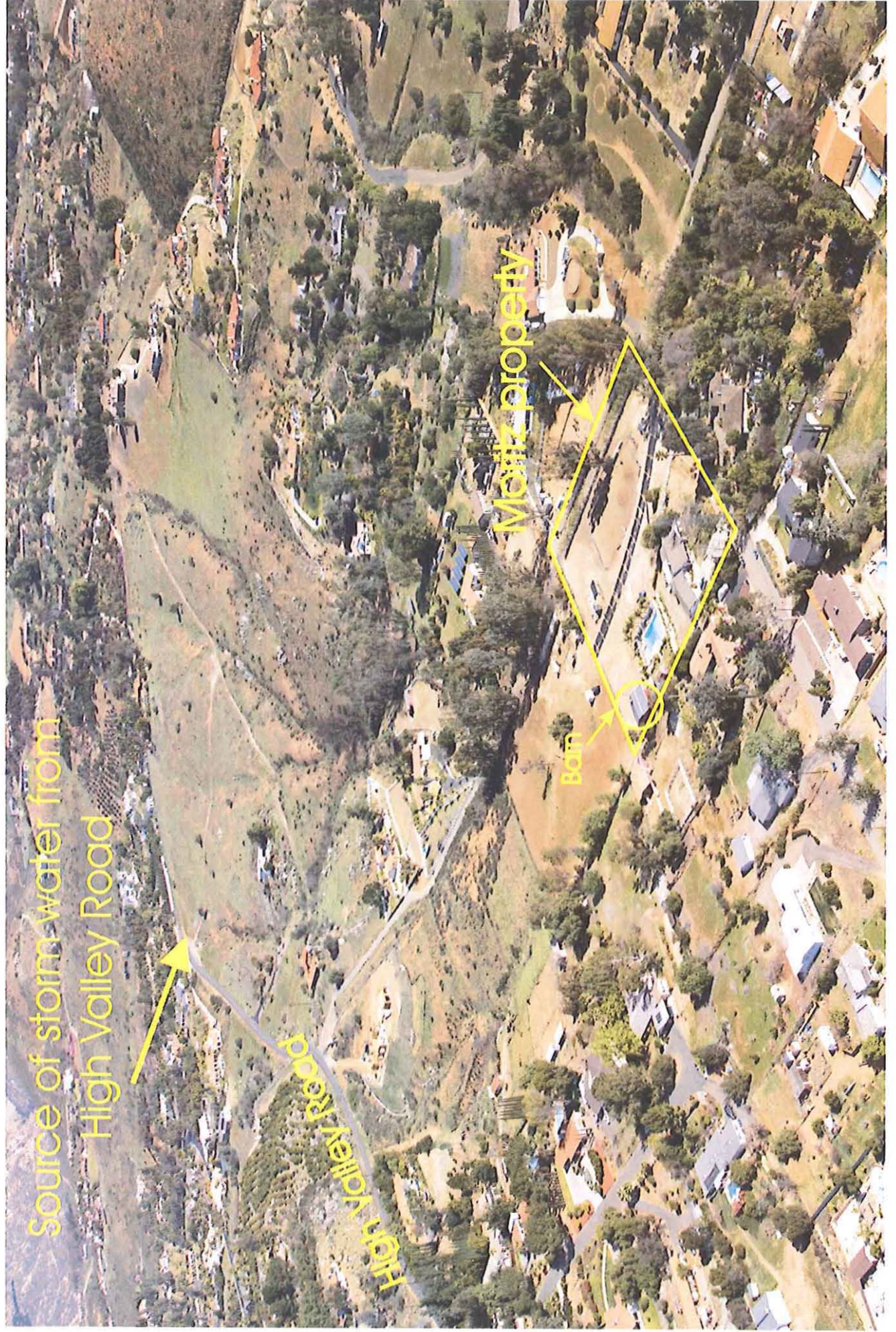
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12 By: Douglas J. Simpson
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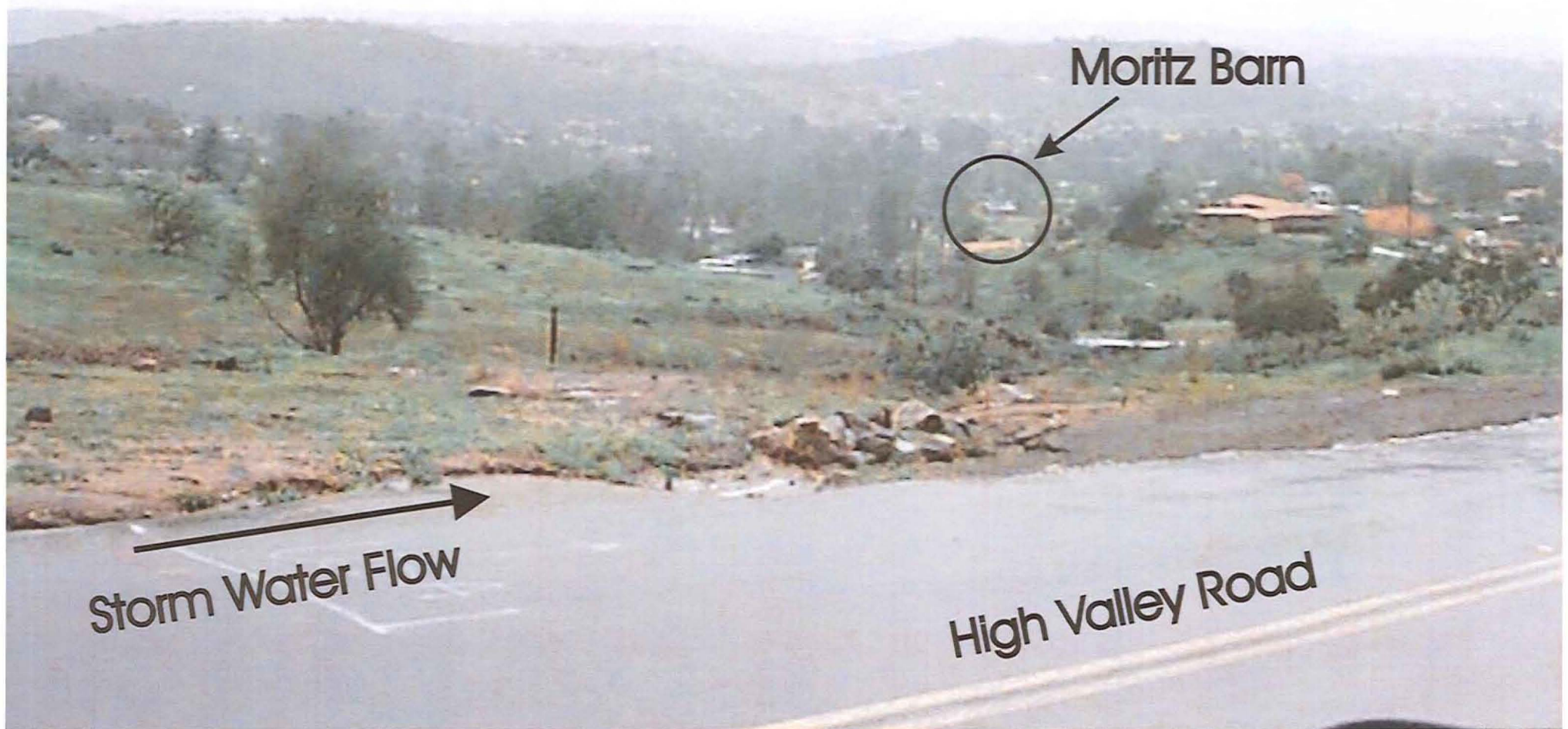
Bill & Lori Moritz
14272 Jerome Drive
Poway, Ca 92064

Storm water runoff from
High Valley Road - 28 Jan 09

DrBill@ShareKids.com * 858 735-5589

Page 1 of 4





Storm Water Flow







Linda Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

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(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>



Arnold Schwarzenegger
Governor

Certified Mail No. 7008 1140 0002 8456 9953
(return receipt requested)

February 17, 2009

Dr. Bill Moritz
14272 Jerome Drive
Poway, CA 92064

In reply, refer to:
CWU: R9-2008-0152:cmeans

CLEANUP AND ABATEMENT ORDER NO. R9-2008-0152
Moritz Residence
Site Location: 14272 Jerome Drive,
City Of Poway, San Diego County

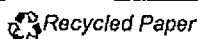
Dear Dr. Moritz:

Enclosed is Cleanup and Abatement Order (CAO) No. R9-2008-0152 of the California Regional Water Quality Control Board, San Diego Region (Regional Board) concerning discharges of sediment and rock into an unnamed, ephemeral stream that is tributary to Rattlesnake Creek and ultimately Poway Creek, located on your property at 14272 Jerome Drive, Poway, San Diego County (Los Penasquitos Hydrologic Unit, HSA: 906.20). The CAO was adopted by the Regional Board at the February 11, 2009 Board meeting.

The CAO is issued pursuant to California Water Code (CWC) Section 13304 and directs you to cleanup the sediment and rock (waste), remove the 24-inch diameter high density polyethylene (HDPE) drainage pipe and abate the pollution associated with the discharges from the Project. Please note the deadlines contained within the CAO. Failure to meet the deadlines may subject you to substantial civil liability.

The CAO is effective immediately. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with CWC Section 13320 and Section 2050 of Title 23, California Code of Regulations. The State Board must receive the petition within 30 days of the date of the enclosed Order.

California Environmental Protection Agency



February 17, 2009


I strongly urge a prompt and complete response to each directive in the CAO. Failure to comply with the CAO may result in further enforcement including: assessment of civil liability under CWC Sections 13261, 13268, 13350, and/or 13385; a Time Schedule Order under CWC Section 13308, referral to the State Attorney General for injunctive relief or monetary remedies; and referral to the District Attorney for criminal prosecution.

As indicated in the directives of the CAO and pursuant to CWC Section 13304, the Regional Board is entitled to reimbursement for all reasonable costs actually incurred to investigate unauthorized discharges of waste and to oversee cleanup of such waste, or other remedial action required under this CAO. The Regional Board will be issuing periodic invoices for the investigation and oversight of cleanup efforts on your property.

Please contact Christopher Means at (858) 637-5581 or cmeans@waterboards.ca.gov if you have any questions regarding this matter.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

JHR:cc:cjm

Enclosure: Cleanup and Abatement Order No. R9-2008-0152

CIWQS Entries:

Regulatory Measure: 354952

Place: 719044

Party: 472125

CC (with enclosure):

Mr. Douglas J. Simpson
The Simpson Law Firm
1224 10th Street, Suite 201
Coronado, CA 92118-3420

California Environmental Protection Agency

Mr. Danis Bechter
Engineering Inspection Supervisor/NPDES Coordinator
City of Poway
13325 Civic Center Drive
Poway, CA 92064

Mr. Robert Smith
U.S. Army Corps of Engineers
Regulatory Division
South Coast Branch, San Diego Section
6010 Hidden Valley Road, Ste. 105
Carlsbad, CA 92011

Ms. Kelly Fisher
California Department of Fish and Game
South Coast Region
Habitat Conservation Planning – South
4949 Viewridge Avenue
San Diego, CA 92123

Ms. Lisa A. Foster
City Attorney of Poway
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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

CLEANUP AND ABATEMENT ORDER NO. R9-2008-0152

FOR

**Dr. William & Lori Moritz
14272 Jerome Drive
Poway, CA**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. Dr. William & Lori Moritz are the owners and residents of a single family residential home, with associated out-buildings located at 14272 Jerome Drive, in Poway, California (APN # 321-040-49). The property occupies an area of approximately 2.45 acres.
2. On or before February 7, 2008, Dr. Bill Moritz (hereinafter Dr. Moritz) discharged waste (from unknown locations) at 14272 Jerome Drive, Poway, CA (hereinafter referred to as Site) which consists of sand, silt, clay, or other earthen materials into an unnamed, ephemeral stream that is tributary to Poway Creek in violation of the California Water Code. Additionally, Dr. Moritz installed approximately 340 feet of 24-inch high-density polyethylene (HDPE) pipe and associated structures to convey upstream drainage across his property. Attachment No. 1 includes a June 9, 2008 Regional Board Facility Inspection Report and photographs taken from various sources documenting site conditions and the discharge event, including described observation of the subject site.
3. The ephemeral stream course may be determined to be jurisdictional waters of the United States. The United States Army Corps of Engineers is the lead Federal agency with jurisdiction to issue Clean Water Act Section 404 permits to allow short term and long term impacts to waters of the United States.
4. The ephemeral stream watercourse is by definition a water of the State as defined by Section 13050(e) of the California Water Code (CWC).

5. The discharge of waste and sediment at and from the Site causes and threatens to cause a condition of pollution by directly affecting waters used for beneficial uses. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of the stream channel by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the adjacent channel bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics.
6. The unauthorized discharge of waste by Dr. Moritz is in violation of CWC Sections 13260(a) and 13264(a) which require that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State, shall file a report of waste discharge (ROWD). The discharge of dredged or fill material may constitute a discharge of waste that could affect the quality of waters of the State.
7. Any person that violates CWC Sections 13260(a) and/or 13264(a) is guilty of a misdemeanor and may subject Dr. Moritz to civil liability in accordance with CWC Sections 13261¹ and 13265².
8. The unauthorized discharge of waste by Dr. Moritz is in violation of the following waste discharge prohibitions contained in the Water Quality Control Plan for the San Diego Basin (Basin Plan):

"1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in CWC Section 13050, is prohibited;"

"3. The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) is prohibited;" and

"14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited."

¹ WC section 13261 (a) states that: Any person failing to furnish a report under 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly...

² WC section 13265 (a) states that: Any person discharging waste in violation of WC 13264, after such violations has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly... Each day of such discharge shall constitute a separate offense.